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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,144	02/07/2002	Lutz Maas	20294.004	1442
21878	7590	12/16/2004	EXAMINER	
KENNEDY COVINGTON LOBDELL & HICKMAN, LLP			DEL SOLE, JOSEPH S	
214 N. TRYON STREET			ART UNIT	
HEARST TOWER, 47TH FLOOR			PAPER NUMBER	
CHARLOTTE, NC 28202			1722	

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/072,144

Applicant(s)

MAAS ET AL.

Examiner

Joseph S. Del Sole

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: 3-12Claim(s) rejected: 1 and 2

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because: The request for reconsideration is dependent upon the submitted terminal disclaimer. However, as set forth, the terminal disclaimer is not accepted..

Joseph S. Del Sole 12/10/04  
Joseph S. Del Sole

## **ADVISORY ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on 12/02/04 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Application No. 10/194,652 has been reviewed and is NOT accepted.
  - a. The person who signed the terminal disclaimer is not recognized as an officer of the assignee, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.
2. The Examiner notes that a C.E.O. is not an authorized officer empowered to act on behalf. An example of an authorized officer would be the President. The Examiner notes that a registered attorney or agent of record (such as one indicated on the Oath) may sign the terminal disclaimer.
3. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).
4. The Examiner notes that a double patenting rejection remains over Application No. 10/216,463 in view of Linz (5,536,157). Such a rejection has not been, but should be, addressed.
5. The Examiner has set forth the still pending rejections.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1 and 2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7 and 8 of copending Application No. 10/194,652 (published as US2003/0025239) in view of Linz (5,536,157).

Claims 1, 7 and 8 of US2003/0025239 teach a device for melt extrusion spinning and cooling of a filament bundle (claim 1, lines 1-2) by a spinning device having an annular spinning jet (claim 1, lines 1-2) and a cooling device arranged below the spinning device (claim 1, line 5), wherein the cooling device has a blowing chamber for directing a coolant stream onto the filament bundle and a holding device for engaging the blowing chamber between the spinning device and the holding device in an operating position of the blowing chamber substantially centrally to the spinning jet (claim 1, lines 6-11), the blowing chamber being displaceable axially relative to the holding device between the operating position and a replacement position (claim 1, lines 12-16 and claim 7, lines 1-3); and the blowing chamber and the holding device are detachably connected to one another to facilitate replacement of the blowing chamber in the replacement position (claim 8, lines 1-3).

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Claims 1, 7 and 8 of US2003/0025239 fail to teach the blowing chamber being of cylindrical shape extended in the axial direction with a porous annular jacket.

Linz teaches a blowing chamber of cylindrical shape extended in the axial direction with a porous annular jacket (Fig 1, #4) for the purpose of dispensing air to the filaments through multiple orifices (col 4, lines 39-54) such that the melt-spun yarn has uniform molecular orientation (col 1, lines 60-67).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of claims 1, 7 and 8 of US2003/0025239 with a cylindrically shaped blowing chamber extended in the axial direction with a porous annular jacket as taught by Linz because it enables uniform molecular orientation of cooled spun filaments.

This is a provisional obviousness-type double patenting rejection.

8. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 10/216,463 (published as US2003/0039710) in view of Linz (5,536,157).

Claims 1 and 2 of US2003/0039710 teach a device for melt extrusion spinning and cooling of a filament bundle (claim 1, line 1) by a spinning device having an annular spinning jet (claim 1, lines 2-3) and a cooling device arranged below the spinning device (claim 1, lines 4-5), wherein the cooling device has a blowing chamber for directing a coolant stream onto the filament bundle and a holding device for engaging the blowing chamber between the spinning device and the holding device in an operating position of

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the blowing chamber substantially centrally to the spinning jet (claim 1, lines 4-10), and the blowing chamber being displaceable axially relative to the holding device between the operating position and a replacement position (claim 1, lines 11-17 and claim 2, lines 1-4).

Claims 1 and 2 of US2003/0039710 fail to teach the blowing chamber being of cylindrical shape extended in the axial direction with a porous annular jacket.

Linz teaches a blowing chamber of cylindrical shape extended in the axial direction with a porous annular jacket (Fig 1, #4) for the purpose of dispensing air to the filaments through multiple orifices (col 4, lines 39-54) such that the melt-spun yarn has uniform molecular orientation (col 1, lines 60-67).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of claims 1 and 2 of US2003/0039710 with a cylindrically shaped blowing chamber extended in the axial direction with a porous annular jacket as taught by Linz because it enables uniform molecular orientation of cooled spun filaments.

This is a provisional obviousness-type double patenting rejection.

### **Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

*Joseph S. D. 806*

J.S.D.

December 10, 2004